

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

KeySpan Energy Delivery New England))
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D.T.E. 05-68

**SUPPLEMENTAL MOTION OF
KEYSPAN ENERGY DELIVERY NEW ENGLAND FOR
PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Now comes KeySpan Energy Delivery New England ("KeySpan") and hereby request that the Department of Telecommunications and Energy (the "Department") grant protection from public disclosure of certain confidential, competitively sensitive and proprietary information submitted in this proceeding in accordance with G.L. c. 25, § 5D.

I. BACKGROUND

On February 14, 2006, KeySpan filed its responses to the Department's Second Set of Information Requests. The attachments to responses DTE 2-12 and DTE 2-13 disclose information that is confidential and proprietary. Accordingly, KeySpan requested that Attachment DTE 2-12 (b) and Attachment DTE 2-13 be protected from public disclosure. KeySpan filed redacted copies deleting references to confidential and proprietary information for the public record. KeySpan also filed confidential pages in a sealed envelope marked "Confidential." On March 9, 2006 KeySpan filed its responses to the Attorney General's first set of information requests. The attachments AG 1-2 (d) and AG 1-2 (e) also contain confidential and proprietary treatment. Accordingly KeySpan hereby supplements its February 14, 2005 motion to include Attachments AG 1-2 (d) and AG 1-2 (e) in its request for confidential treatment.

II. LEGAL STANDARD

Pursuant to G.L. c. 25, § 5D, the Department is authorized to protect from public disclosure “trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings.” The Department has developed a three-part standard for assessing requests for protective treatment submitted pursuant to c. 25, § 5D. First, the information for which protection from disclosure is sought must constitute “trade secrets, [or] confidential, competitively sensitive or other proprietary information.” Second, the party seeking protection from disclosure must overcome the statutory presumption that the public is benefited by disclosure of that information by “proving” the need for non-disclosure. Finally, the Department will protect only so much of the information as is necessary to meet the established need. See, e.g., Western Massachusetts Electric Company, D.T.E. 99-56 (1999); Dispatch Communications of New England d/b/a Nextel Communications, Inc., D.P.U. 95-59-B/95-80/95-112/96-13, September 2, 1997 Procedural Order. Appropriate considerations with respect to the public interest issue include an assessment of the interests at stake, the likely harm that would result from public disclosure of information, and the public policy implications of such disclosure. See, e.g., Berkshire Gas Company, D.P.U. 93-187/188/189/190 (1994); Boston Gas Company, D.P.U. 92-259 (1993), Essex County Gas Company, D.P.U. 96-105 (1996).

III. BASIS FOR CONFIDENTIALITY

KeySpan seeks protection from public disclosure certain information contained in Attachment AG 1-2 (d) and AG 1-2 (e) because they disclose competitively negotiated, market sensitive commodity price terms. The Department has often exercised its authority

to protect sensitive market information. For example, the Department has determined specifically that competitively sensitive information, such as price terms, are subject to protective status:

The Department will continue to accord protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive. Proponents generally will face a more difficult task of overcoming the statutory presumption against the disclosure of other terms, such as the identity of the customer.

Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996). See also Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (the Department determined that price terms were protected in gas supply contracts and allowed Colonial Gas Company's request to protect pricing information including all "reservation fees or charges, demand charges, commodity charges and other pricing information").

Moreover, the Department has recognized that competitively sensitive terms in a competitive market should be protected and that such protection is desirable as a matter of public policy:

The Department recognizes that the replacement gas purchases . . . are being made in a substantially competitive market with a wide field of potential suppliers. This competitive market should allow LDC's to obtain lower gas prices for the benefit of their ratepayers. Clearly the Department should ensure that its review process does not undermine the LDC's efforts to negotiate low cost flexible supply contracts for their systems. The Department also recognizes that a policy of affording

contract confidentiality may add value to contracts and provide benefits to ultimate consumers of gas, the LDC's ratepayers, and therefore may be desirable for policy reasons.

The Berkshire Gas Company et al., D.P.U 93-187/188/189/190, at 20 (1994).

IV. CONCLUSION

For the above reasons, disclosure on the public record of the competitively sensitive information contained in Attachments AG 1- 2 (d) and AG 1-2-(e), would be detrimental to the public interest.

WHEREFORE, KeySpan respectfully requests that the Department grant its Motion for Protective Treatment as stated herein.

Respectfully submitted,

Thomas P. O'Neill, Senior Counsel
KeySpan Energy Delivery New England
52 Second Avenue
Waltham, MA 02451
781-466-5136

Dated: March 9, 2006